

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 FLORENCE DIVISION

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LEVON ROBINSON,

Petitioner,

v.

STATE OF SOUTH CAROLINA;
 and ROBERT M. STEVENSON, III,
 WARDEN OF BROAD RIVER
 CORRECTIONAL INSTITUTION,

Respondents.

Civil Action No.: 4:07-1308-SB


ORDER

This matter is before the Court upon Petitioner Levon Robinson's ("Robinson" or "the Petitioner") *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The record contains a report and recommendation ("R&R") of a United States Magistrate Judge, which was made in accordance with 28 U.S.C. § 636(b)(1). In the R&R, the Magistrate Judge recommends that the Court dismiss Robinson's § 2254 petition pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute.


The Petitioner filed the present § 2254 petition on May 9, 2007, and the Respondents filed a motion for summary judgment on August 3, 2007, along with a supporting memorandum. The Magistrate Judge issued an order on August 6, 2007, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4 th Cir. 1975), advising the Petitioner of the procedure for a motion for summary judgment, including the possible consequences of failing to adequately respond to the motion. As of September 19, 2007, the date of the R&R, the Magistrate Judge had received no response from the Petitioner. On September 21, 2007, however, the Court received from the Petitioner a motion for summary judgment

as well as a response in opposition to the Respondents' motion for summary judgment. These filings appear to have been signed by the Petitioner on September 18, 2007. Because the Petitioner has now responded to the Respondents' motion for summary judgment and filed his own motion for summary judgment, the Court believes it would be improper to dismiss this action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. Therefore, the Court declines to adopt the R&R and instead remands the matter to the Magistrate Judge for further consideration of the matter in light of the Petitioner's response in opposition to the Respondents' motion for summary judgment and the Petitioner's own motion for summary judgment.

Based on the foregoing, it is

 **ORDERED** that this matter is remanded to the Magistrate Judge for further consideration consistent with this Order.

IT IS SO ORDERED.


The Honorable Sol Bratt, Jr.
Senior United States District Judge

October 1, 2007
Charleston, South Carolina